

**MINUTES FOR THE
MEETING OF THE
BOARD OF LAND AND NATURAL RESOURCES**

DATE: FRIDAY, FEBRUARY 11, 2005
TIME: 9:00 A.M.
PLACE: KALANIMOKU BUILDING
LAND BOARD CONFERENCE ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HAWAII 96813

Chairperson Peter Young called the meeting of the Board of Land and Natural Resources to order at 9:10 a.m. The following were in attendance:

MEMBERS

Mr. Peter Young
Ms. Kathryn Inouye
Mr. Ron Agor

Mr. Timothy Johns
Mr. Ted Yamamura

STAFF

Mr. Warren Wegesend, Land
Mr. Richard Rice, DOBOR
Mr. Paul Conry, DOFAW
Ms. Melanie Chinen, HP

Mr. Sam Lemmo, OCCL
Mr. Steve Thompson, DOBOR
Mr. Dan Quinn, State Parks
Mr. Michael Shinozuka, DOT

OTHER

Ms. Julie China, Deputy Attorney General
Mr. Tim Lui-Kwan, D-2
Mr. Bill Tam, D-11
Mr. Hank Mulligan, J-1

Mr. Chip Doyle, D-9
Mr. Randy Vitousek, K-1
Mr. Michael Doyle, J-2

Note: language for deletion is [bracketed], new/added is underlined}

Item A-1: Minutes of January 28, 2005

The Board made the following change to Page 7, title of Item K-1 to read

“Conservation District Use Application (CDUA) MA-3204 for the Lahaina Watershed Flood Control Project by the County of Maui, Department of Public Works and Environmental Management at Subject Parcel TMK: (2) 4-7-001:018, Waianukole, [~~Lasgana~~] Lahaina, Maui and Adjacent Submerged Lands.

Unanimously approved as amended (Johns/Inouye).

Item M-1: Conveyance of portion of Kamehameha Highway, Federal Aid Project No. SN-FAP-9-D(4) to the City and County of Honolulu, Tax Map Key: (1) 1-2-26: portion of Kamehameha Highway.

Unanimously approved as submitted (Johns/Inouye).

Item D-2: Grant of Term, Non-Exclusive Easement to Garrett Frank Saikley Trust for Revetment Purposes, Kuliouou, Honolulu, Oahu, TMK: (1) 3-8-01:01 por.

Warren Wegesend, Jr., Administrator for the Land Division reminded the Board in 1978, as an emergency measure, the owner placed rocks along the eroded section to prevent further loss of property and jeopardy to its occupants. At present the applicant plans to renovate the house, which triggered the need for shoreline certification and building permit. The Office of Conservation and Coastal Lands (OCCL) does not consider the encroachment a violation of Conservation District regulations and rules. Mr. Wegesend went on to communicate that there are records that indicate that the Department and other agencies were notified when the revetment was placed in 1978, however there is no official permit document issued for the work and the current owner is willing to obtain a disposition. Mr. Wegesend recommended the Board waive the fine, authorize the acceptance of a deposit in the amount of \$36,455.00 from the applicant as an estimated easement consideration, and receive concurrence from the Division of Forestry and Wildlife.

Member Inouye had some concerns with regards to the amount of the estimated easement consideration and questioned how they derived at this figure.

Tim Lui-Kwan of Carlsmith Ball indicated they were unsure of how staff derived the amount of the estimated easement consideration. He did understand that an appraiser would determine the final amount. Mr. Lui-Kwan asked the Board to lower the amount of the deposit as he feels staff has doubled their conservative amount and would prefer to pay an amount half the amount derived by staff.

Dede Mamiya informed the Board they’ve included a high factor due to past estimated amounts being too low. She did note in the past upon the completion of the appraisal, the amounts have gone down.

Unanimously approved as submitted (Inouye/Agor).

Item D-9: Issuance of Right-of-Entry Permit and Grant of Term, Non-Exclusive Easement to Hilton Hawaiian Village LLC, Waikiki, Oahu, TMK: (1) 2-3-37: por. 12 & 21.

Mr. Wegesend pointed out he was able to confirm the request was exempt under Class 5.

Mr. Wegesend communicated that Hilton is in the process of redeveloping its property including the adjacent lagoon. Over the years, Hilton has been abiding by a September 1995, deed and has maintained the lagoon at their own expense. Mr. Wegesend pointed out to charge Hilton market consideration would be unreasonable as they also plan on spending in excess of \$5,000,000 for this project. Therefore staff is requesting granting the easement at gratis.

Ms. Inouye questioned the need of having to issue both a right-of-entry and a grant of term, non-exclusive easement today. Mr. Wegesend noted that Hilton requires an immediate right-of-entry but the easement could be issued at a later date.

Chip Doyle of Group Pacific testifying for the Hilton Hawaiian Village came forward to let the Board know that they've currently scheduled a meeting set up with the Association of Apartment Owners of the Ilikai Apartment Building next week Friday to update those interested in the Hilton's plans. As for the Makai Society, Mr. Doyle confirmed that no meeting has been scheduled. When asked by the Board if he would be okay with just the issuance of the Right-of-Entry today, he noted his agreement.

Written testimony was received from Terrance Revere of the laws firm Motooka, Yamamoto and Revere, Janet Mandrell of the Makai Society and George Downing of Save Our Surf.

The Board amended the Recommendation Section by deleting Recommendation 2).

Unanimously approved as amended (Inouye/Johns).

Item D-11: Grant of Term, Non-Exclusive Easement to Waipouli Beach Resort, LLC for Rock Groin Purposes, Waipouli, Kauai, Tax Map Key: (4) 4-3-08: 01.

Mr. Wegesend conveyed that Esaki Surveying and Mapping Inc., on behalf of the applicant submitted a shoreline certification application but it was rejected due to an encroachment. The encroachment consisted of two rock groins, which existed since 1962. The shoreline certification process prompted the applicant to apply for an easement. Staff at the Office of Conservation and Coastal Lands has determined that the subject groin was built before 1964 therefore they do not consider the encroachment as a Conservation District violation. Due to the fact that the encroachment is over 100 square feet Mr.

Wegesend is recommending a fine of \$500 and that the Board authorize the acceptance of a deposit from the applicant in the amount of \$10,795.00.

Bill Tam representing Waipouli Beach Resort informed the Board he has no objections to staff's submittal.

Unanimously approved as submitted (Agor/Johns).

Item K-1: Enforcement File No. KA-03-19 Regarding Alleged Unauthorized Construction of a Second Single Family Residence (SFR) and Unpermitted Improvements to an Existing Single Family Residence on Private Land Located in the State Land Use Conservation.

Sam Lemmo, Administrator of the Office of Conservation and Coastal Lands (OCCL) let it be known on September 10, 2002 a request was made to reconstruct a Single Family residence on the subject lot. On October 15, 2002 staff informed the applicant that their request would be denied as the structure being requested to rebuild was illegally constructed and was unpermitted. Mr. Lemmo further noted because the subject parcel is located on conservation land a second residence is not allowed. As background information Mr. Lemmo mentioned on October 19, 2002, a Division of Conservation and Resources Enforcement (DOCARE) office went out to the subject parcel and only observed a vacant pad. On July 2004, staff went back out to the site to conduct a site visit and observed that the structure had been built without their approval. Mr. Lemmo went over various proposals the applicant could initiate to conform to Conservation District rules. Mr. Lemmo recommended the Board find the landowner in violation of Chapter 183C, Hawaii Revised Statutes (HRS) and Chapter 13-5, Hawaii Administrative Rules (HAR) and is subject to the ten conditions listed in staff's submittal.

Randy Vitousek, representing the respondent confirmed in 1972 the Board granted a Conservation District Use Application (CDUA) for a single-family residence. Mr. Vitousek pointed out at that time staff knew of the existence of an A-frame structure on the parcel and did nothing about it. He asked that the Irons be allowed to apply for a CDUA and complete the Environmental Assessment process. Mr. Vitousek let it be known his client proposes to move the existing structures together to create one single-family residence and to remove one kitchen. Mr. Vitousek did acknowledge a violation of conservation district rules but asked the Board to delete recommendation 5) which calls for the removal of the A-frame structure and instead allow his clients to apply for a CDUA which would combine the two existing structures into one single-family residence.

Mr. Lemmo disclosed his office has received a request for a rule amendment to Chapter 13-5, Hawaii Administrative Rules (HAR) that will provide for additional exceptions to the minimum lot size standards, which could possibly benefit the applicants if approved.

The Board informed Mr. Vitousek of his right to a contested case hearing and he acknowledged this right and what was involved in requesting a contested case hearing.

The Board made the following changes:

1) Recommendation 5)

“That the second SFR be removed from the subject parcel within [~~six (6) months~~] two (2) years of the date of the Board’s action, unless otherwise approved;”

2) Addition of Recommendation 11)

“That the landowner shall submit a Conservation District Use Application of the after-the-fact improvements within six (6) months of the Board’s action on this matter;”

3) Addition of Recommendation 12)

“That the landowner shall remove the kitchen from the second dwelling immediately.”

Unanimously approved as amended (Agor/Johns).

Item K-2: Appointment and Selection of a Hearing Officer to Conduct All Hearings for One (1) Contested Case Hearing. Docket No. OA-05-02 in the matter of a Contested Case to Appeal Staff’s Recommendation Regarding Failure to Comply with the Board of Land and Natural Resources Order to Remediate Land Located in the Conservation District and for Continuing to Grub and Grade, and Widen a Road Without Authorization.

Mr. Lemmo indicated the attorney for the landowner submitted an initial written request for a contested case hearing. Upon receipt of the request staff realized additional information was required and the landowner provided the additional information, which Mr. Lemmo handed to the Board. Mr. Lemmo recommended the Board authorize the appointment of a Hearing Officer for to conduct all the hearing relevant to the subject petition for a Contested case hearing.

Unanimously approved as submitted (Inouye/Johns).

Item J-1: Request for Approval to Amend Hawaii Administrative Rules, Section 13-233-29 as it Relates to the Eligibility for Parking Permits.

Richard Rice, Administrator of the Division of Boating and Ocean Recreation (DOBOR) and Steve Thompson, Oahu District Manager for DOBOR appeared before the Board to provided information on the above agenda item. Mr. Thompson pointed out the submittal requests parking for the Hawaii Yacht Club, which currently holds a lease with the Department. When questioned by the Board as to the location of the public hearing, Mr.

Thompson indicated the public hearing would probably be held at Jefferson Elementary School.

Hank Mulligan of the Hawaii Yacht Club was present and also provided written testimony.

Unanimously approved as submitted (Inouye/Johns).

Item J-2: Request for Approval to Amend Hawaii Administrative Rules, Sections 13-234-29 and 13-231-45 (i), as they Relate to Marine Surveyor Vessel Inspection Fees and Qualifications.

Mr. Rice pointed out this submittal is also a request to go to public hearings on a change to the Administrative Rules. He noted any objections to the rules can be addressed through the public hearing process.

Michael Doyle, a surveyor for thirty-two (32) years came forward to testify. Mr. Doyle noted his agreement with staff's recommendation but questioned Exhibit A, 1(b) that stated that the cost for a vessel inspection would not exceed \$100.00 including travel expenses. He pointed out most credited marine surveyor's in Hawaii charge about \$10 per linear foot which would mean staff's "not to exceed amount" is too low. He recommended the "Not to exceed amount" be increased to at least \$125.00 including travel expenses. With respect to the condition that the applicant be a member of either the National Association of Marine Surveyors or the Society of Accredited Marine Surveyors, Mr. Doyle agrees with this condition.

Written testimony was received from Gary Neftel of Ocean Surveys and Management Company, Trans-Pacific Marine Surveyors and Virginia Harper of Navtech US Surveyors Association.

The Board made the following change:

1) Exhibit A, 1(b)

“(b) The fee for a vessel inspection performed by a marine surveyor approved by the department prior to the issuance of a regular mooring permit shall be not less than \$1.00 per linear foot of the vessel length over all, not to exceed [~~\$100.00~~] \$250.00 including travel expenses.”

Unanimously approved as amended (Johns/Inouye).

Item I-1: Awarding of Historic Preservation Federal Grant-in-Aid.

The Board questioned if two counties were eligible for the fund why were we giving all the monies to one county.

Melanie Chinen, Administrator for Historic Preservation communicated the County of Maui and the County of Kauai were eligible to receive this grant-in-aid. Ms. Chinen let it be known the two counties alternate year-to-year on who is to receive grants and this year it is the County of Maui. Ms. Chinen informed the Board she would be meeting with federal officials later this month and will be discussing the idea of having everyone compete for the grants annually.

Unanimously approved as submitted (Yamamura/Agor).

Item D-4: Set Aside to Department of Land and Natural Resources, Division of Forestry and Wildlife for Continuation of the Paiko Lagoon Wildlife Sanctuary, Honolulu, Hawaii, TMK: (1) 3-8-01:01, 67, 70, 71, 72, 73 and (1) 3-8-03:51.

Mr. Wegesend reminded the Board of its adoption of Regulation 38 which declared and established the Paiko Lagoon Wildlife Sanctuary. He pointed out an Executive Order setting aside the subject area was never completed and is here today to accomplish this.

Unanimously approved as submitted (Inouye/Johns).

Item D-3: Acquisition of Remnant County Lands and Set Aside to Department of Accounting and General Services for Continued Use as Part of the Vineyard Street Garage Project, Honolulu, Oahu, TMK: (1) 2-1-18:Remnant.

Mr. Wegesend pointed out when the subject lands where set aside by an Executive Order inadvertently a small portion of land was left out. Currently, the subject remnant is now located in the grassed yard area along Punchbowl Street. Mr. Wegesend recommended the Board authorize the acquisition of the subject County lands and approve of and recommended to the Governor the issuance of an executive order setting aside the subject lands to the Department of Accounting and General Services.

Unanimously approved as submitted (Inouye/Johns).

Item D-7: Amend Prior Board Action of December 10, 2004 (Item D-19), Consent to Assign General Lease No. S-5094, Andrea Cronrod, Assignor, to Kathleen Castillo, Assignee, Lot 76, Puu Ka Pele Park Lots, Waimea (Kona), Kauai, TMK: (4) 1-4-2:73.

Motion to Defer

Unanimously approved to defer (Johns/Inouye).

Item D-5: Sale of Remnant State Land to Stacey Elliott, Waiakea, South Hilo, Hawaii, TMK: (3) 2-4-41:78.

- Item D-6:** Sale of Flume Right-of-Way Reservation to John A. McCall and Marla Y. McCall, Manowaiipoae Homesteads, North Hilo, Hawaii, TMK: (3) 3-6-06:91.
- Item D-8:** Consent to Assign and Consent to Mortgage of General Lease No. S-3742, Yasuo Kuwaye, Trustee Under the Revocable Trust Agreement of Yasuo Kuwaye, Assignor and Mortgagee, to JH Moku Ola, LLC, Assignee and Mortgagor, Waiakea, South Hilo, Hawaii, TMK: (3) 2-2-58:14.
- Item D-10:** Withdrawal of Lands from General Lease No. S-3709, Oceanic Institute, Lessee, and Set Aside to State Department of Transportation for the Kalanianaʻole Highway Improvement Retaining Wall at Makapuu, Project No. 72B-02-02, Waimanalo, Koolau-poko, Oahu, TMK: (1) 4-1-14:por. 13.

Unanimously approved as submitted (Johns/Inouye).

- Item D-1:** Rescind Prior Board Action of March 8, 1968, Agenda Item D-10, Request for Perpetual Non-Exclusive Easement for Electric Stub Poles, Guy Wires and Anchors to Hawaiian Electric Co. (HECO) at Lualualei, Waianae, Oahu, TMK: (1) 8-7-08:por. 26.

Member Johns recused himself.

Unanimously approved by the remaining Board members (Inouye/Agor).

- Item C-1:** Request For Approval to Enter into a 2-Year Contract with Pono Pacific Land Management, LLC, to Provide Services to Construct an Interpretive Trail within Kipuka 21 on the Island of Hawaii.

Unanimously approved as submitted (Inouye/Yamamura).

- Item E-1:** Request for Approval in Concept and to Issue a Public Notice to Solicit Interest for Developing Educational and Multi-Recreational Opportunities within Wahiawa Freshwater State Recreation Area, Oahu.

Dan Quinn, Administrator of State Parks informed the Board the development of the Wahiawa Freshwater State Recreation Area is similar to that of the Wailua Reservoir, on Kauai which the Board granted approval for last year. Mr. Quinn pointed out the reservoir is owned by Dole and any commercial activity that takes place on the lake would have to be worked out with Dole. He noted presently there is no commercial activity at the reservoir and that's something that needs to be discussed with Dole. Mr. Quinn recommended the Board approve this initiative in concept and authorize the Department to issue a public notice to solicit interest and ultimately solicit proposals for developing and

operating educational and multi-recreational opportunities at Wahiawa Freshwater State Recreation Area.

Unanimously approved as submitted (Inouye/Johns).

Item L-1: Appointment of Windward Oahu Soil and Water Conservation District Directors.

Unanimously approved as submitted (Johns/Yamamura).

There being no further business, Chairperson Young adjourned the meeting at 10:50 a.m. Tapes of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,

Terry Crowell

Approved for submittal:

PETER T. YOUNG
Chairperson
Department of Land and Natural Resources